

**ETHICAL AND LEGAL ISSUES
IN STUDENT AFFAIRS AND
HIGHER EDUCATION**

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PRACTICE AND PROFESSIONAL IDENTITY

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ETHICAL AND LEGAL ISSUES IN STUDENT AFFAIRS AND HIGHER EDUCATION

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(With 13 Other Contributors)



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*Without the love and support of my dear partner, David, and
my kids, Olivia and Max, this would not have been possible.
I thank you and hope that you always know you have
a strong voice and use it to lift others up.*

FOREWORD

*In law a man is guilty when he violates the rights of others.
In ethics he is guilty if he only thinks of doing so.*

—Immanuel Kant

E*thical and Legal Issues in Student Affairs and Higher Education* edited by Dr. Anne M. Hornak is a book that helps you the reader gain knowledge on ethical and legal issues in the field of student affairs and develop competency to follow the profession's principles and standards of ethical conduct. With the knowledge and skills provided in this book, you, as student affairs educator, will develop the professional competency of self-regulating and assuring your ethical behaviors in student affairs practice. Consequently, you will know, as Potter Stewart said, "the difference between what you have a right to do and what is right to do."

Ethical and Legal Issues in Student Affairs and Higher Education is an essential volume in the *American Series in Student Affairs and Professional Identity*. The significance of this book is due to its focus on the practical value of ethics and legal issues, one of the Professional Competency Areas for Student Affairs Educators proposed by ACPA/NASPA in 2015. With that said, this book has aimed to address the knowledge, skills, and dispositions required of student affairs educators to develop and maintain integrity in their life and work as described in the Personal and Ethical Foundations Competency Area by ACPA/NASPA in 2015.

Like the editors and authors in other volumes of the series, the editor and the chapter authors of *Ethical and Legal Issues in Student Affairs and Higher Education* are very knowledgeable and experienced in the field of student affairs and higher education. Especially, their expertise on ethics has made this volume significantly valuable for graduate students in student affairs preparation programs and new student affairs educators. Dr. Anne Hornak has worked in the field of student affairs and higher education for many years and her outstanding contribution to the field and the profession has been recognized by both her own institution and the American College Personnel Association—International (ACPA). With her expertise she has

identified high quality chapter authors for this book. All the insights and wisdoms on ethics and legal issues from these experts will enlighten you the readers on the development of your professional competency and identity.

Ethical and Legal Issues in Student Affairs and Higher Education provides readers with a few major unique features on ethical practice in student affairs. The first unique feature is that it offers graduate students in student affairs preparation programs and new student affairs educators with theories and frameworks which can be used to challenge student affairs educators campus wide on treating each other with respect and dignity. By doing so, student affairs educators create a culture of respect with justice and civility which makes ethical practice possible. Key concepts and terminologies are clarified and multiple foundational theories relevant to ethical practice in student affairs are integrated and applied.

Second, *Ethical and Legal Issues in Student Affairs and Higher Education* offers multiple ethical decision-making models to guide student affairs educators in their ethical decision-making process. These decision-making models represent diverse disciplinary perspectives which will help student affairs educators while addressing ethical dilemmas. Application of these decision-making models in practice is demonstrated in the book.

Third, *Ethical and Legal Issues in Student Affairs and Higher Education* proposes that ethics is not an individual but an organizational responsibility. Therefore, creating a conversation on ethics among all members of the organization is needed and recognizing ethical behaviors should be encouraged. Through this conversation on ethics, an ethical culture would be established, as a result, student affairs educators would be able to make the right decision.

Fourth, the authors of *Ethical and Legal Issues in Student Affairs and Higher Education* further suggest that ethical decision making as a professional skill that can be practiced and applied in student affairs educators' day-to-day practice. The concepts of ethics and value are distinguished and clarified. How to develop and improve ethical decision-making skills in a specific ethical dilemma is instructed and displayed.

The fifth unique feature that *Ethical and Legal Issues in Student Affairs and Higher Education* presents the reader is the knowledge on the most current legal issues in student affairs and higher education. Some of the major issues about federal law and regulation related to students' rights are on civil rights, free speech, discipline and due process, campus safety, and privacy. Issues around each subject are explained in detail and strategies on how to reduce institutional risk on legal matters are propounded.

Finally, like all other volumes in the *American Series in Student Affairs Practice and Professional Identity*, *Ethical and Legal Issues in Student Affairs and Higher Education* reflects the three themes: (1) integration of ACPA/NASPA Competency Areas for Student Affairs Educators; (2) development of pro-

professional identity; and (3) application of knowledge and theories to practice. Particularly, to reveal the theme of applying knowledge and theories to practice, this book has included numerous ethical and legal case studies to help student affairs educators to analyze complex legal and ethical issues that they may face in their daily practice. This book is a valuable tool which not only assists graduate students in student affairs preparation programs and new student affairs educators to expand their knowledge on ethical and legal issues in student affairs but also provides them with insights to develop their ethical decision-making skills.

American Series in Student Affairs Practice and Professional Identity is a unique book series that creates an integration of all ten professional competency areas for student affairs educators outlined by the College Student Educators International (ACPA) and the Student Affairs Administrators in Higher Education (NASPA) in 2015. The series reflects three major themes: professional competencies development, professional identity construction, and case illustrations for theory translation into practice. All volumes in the series are targeting graduate students in student affairs preparation programs and new student affairs educators. The series blends contemporary theories with current research and empirical support and uses case illustrations to facilitate the readers' ability to translate what they have learned into practice and decision making.

Each volume focuses on one area of professional competency except the volume *College Students and Their Environment* which addresses some major aspects of the Interaction of Competencies. As being said the series helps graduate students in student affairs preparation programs and new student affairs educators develop their professional competencies (ACPA/NASPA) by (1) constructing their personal and ethical foundations; (2) understanding the values, philosophy, and history of student affairs; (3) strengthening their ability in assessment, evaluation, and research; (4) gaining knowledge, skills, and dispositions relating to law, policy, and governance; (5) familiarizing with and learning how to effectively utilize organizational and human resources; (6) learning leadership knowledge and developing leadership skills; (7) understanding oppression, privilege, power, and then learning how to understand social justice and apply it in practice; (8) acquiring student development theories and learning how to use them to inform their practice; (9) familiarizing themselves with technologies and implementing digital means and resources into practice; and (10) gaining advising and supporting knowledge, skills and dispositions. As a result, the series helps graduate students in student affairs preparation programs and new student affairs educators foster their professional identity and ultimately achieve their goal of the whole-person education.

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This volume has come together with the hard work and dedication of multiple professionals and their perspectives on ethical and legal issues in student affairs and higher education. It is important that I acknowledge the contributions of the chapter authors in this volume; Jonathan O'Brien, Barbara Bush, Daniel Chen, Regina Garza Mitchell, Ramona Meraz Lewis, Brian Deitz, Natalie Jackson, Janelle Schaller, Tricia Bertram Gallant, Patty Farrell-Cole, José Cabrales, Tammy Hullender, and Margaret Partlo. I also wish to acknowledge the editing and manuscript preparation work of Sean Hill. Your diligence and willingness to offer insights and feedback was invaluable along the way. Additionally, I thank Naijian Zhang who shared a vision of a book that would be a tool for student affairs educators, new professionals, and senior student affairs educators as they navigate the complex ethical and legal issues they are faced with regularly. Finally, I wish to thank my colleagues, family, and friends who have been on this journey with me as I navigated this process.

Anne M. Hornak

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**ETHICAL AND LEGAL ISSUES
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HIGHER EDUCATION**

Chapter 1

OVERVIEW OF THE VOLUME

Anne M. Hornak

Universities should be about more than developing work skills. They must also be about producing civic-minded and critically engaged citizens—citizens who can engage in debate, dialogue and bear witness to a different and critical sense of remembering, agency, ethics and collective resistance.

—Henry Giroux

E*thical and Legal Issues in Student Affairs and Higher Education* is an edited book exploring ethical and legal issues faced by student affairs educators on our college campuses. The volume will be organized around three major components: (1) professional identity; (2) professional standards and competencies (e.g., CAS, ACPA & NASPA, etc.); and (3) case studies and practical exercises. The three components will be integrated into the chapters in the volume.

The need to create meaningful learning experiences for graduate students and new professionals has long been the goal for many faculty and student affairs educators as they design courses, facilitate professional development training programs, and mentor new professionals. Meaningful learning experiences are situations where students make meaning of information and learn to process it in their own contexts. Ideally in these learning situations, students ask themselves, “How does this impact my life and work?” Baxter Magolda (2001) says “preparing students for life after college requires engaging their minds and their internal selves to work toward the complexity they will need for success” (p. 326). Providing opportunities for students to explore the legal and ethical realities they will face as they navigate student affairs and higher education is an invaluable way to engage both their minds and internal selves.

Professional ethics are a key component of the work we do every day in student affairs and higher education. As a profession we often are faced with

ethical and legal issues and many times do not have the proper training or resources to address the dilemmas we face. This book begins to add to the available resources for the preparation of ethical leaders. The chapters will offer an exploration of the dynamics of developing an ethical culture from a conceptual and theoretical perspective, as well as the development of a professional identity.

This book is both critical and timely. A book that focuses on ethical and legal issues in student affairs is needed for faculty in preparation programs, new professionals navigating their identity as student affairs educators, and a resource for mid- and senior-level professionals facilitating ongoing professional development. The book begins to address what it means to have a professional identity, which is ground in the shared ethical and legal values espoused within the profession and academia. Each chapter uniquely contributes to the complexity embedded in the study of ethics and how that is applied to practice. Additionally, the volume is a balance of procedural knowledge, case illustrations, and guided practice exercises to facilitate the reader's ability to translate the theory and research discussed into professional decision making and application.

This text includes nine chapters that will address the complex nature of legal and ethical issues in higher education. This chapter (Chapter One) provides readers with an overview to the volume and orient them to the unique contributions of each chapter. The goal is to situate the importance of ethical and legal preparation in student affairs. Many times, practitioners see themselves as “doers” and overlook the complexity of the work they are doing related to relationships, identity development, behavior, and the truly gray area of what is ethical and what is unethical. The field of student affairs has shared values and standards related to work with students; however, the accountability of acting in ethical ways is often undefined in the field. The major professional organizations (ACPA and NASPA) have ethical standards and principles and a standing ethics board for consultation. However, these ethics boards do not have the power to sanction or hold accountable individual professionals.

Below you will find a brief overview of the chapters that contribute to the entirety of the volume.

Chapter 2: Theoretical Frameworks for Ethical Practice—Jonathan O'Brien

There is a long tradition of character development in U.S. higher education and student theories behind the actions they take in the best interests of students. To illustrate, this chapter focuses on *Respect Happens Here*, a campus-

wide campaign that challenges us to think about how we should treat each other. Although the campaign's promotional material rightly calls for civility and justice on campus, it lacks a meaningful statement about why all members of the campus community should participate. After defining key terms, the discussion applies foundational ethical theories and frameworks to the campaign, identifying limitations and tensions and suggesting new directions in student affairs practice grounded in ethical theory. Using multiple theories and perspectives in ways that prioritize students and meet institutional obligations is essential to ethical practice.

Chapter 3: Practical Overview of Ethical Decision-Making Models—Anne M. Hornak

This chapter provides an overview of three ethical decision-making models that are often used for making ethical decisions. The models that will be included represent multiple disciplines, including but not limited to counseling and psychology, social work, sociology, and education. The three models overviewed in the chapter include differing methods for focusing the issue and then exploring potential solutions. The chapter concludes with a case study that is used as an example of how the models can be a guide to making ethical decisions.

Chapter 4: Creating a Campus Conversation About Ethics—Barbara Bush and Daniel Chen

Many researchers and educators have stated the need for ethics curriculum in undergraduate, graduate, and professional educations. However, few have discussed the need for a campus-wide conversation of ethics among administrators, faculty, staff, and students. Indeed, though most people recognize the importance of ethical culture, in practice most people assume ethics as an individual responsibility. For this chapter, we stress the importance of ethics as an organizational responsibility and that an ethical culture is crucial for individuals within the organization to make ethical decisions. We also believe that ethics must be explicitly discussed and ethical behaviors should be recognized in order to create an ethical culture. Therefore, it is extremely important for institutional leaders to create conversations on ethics among all members of the organization. In this chapter, we will first provide a theoretical framework on why campus conversation on ethics is needed. Then, we will use our institution's journey and goal of creating a campus culture of ethics and a shared language and vision for ethics among administrators, faculty, staff, and students as a replicable case study for others.

Chapter 5: Ethical Decision-Making in Practice—Regina Garza Mitchell, Ramona Meraz Lewis, and Brian Deitz

Professionals working in student affairs and higher education make countless decisions on a daily basis. Each of those decisions impacts human lives, whether students, faculty, or staff, which requires a focus on ethics in addition to rules and policies. Being aware of the ethical nature of problems, the ethical approaches you prefer, and the codes to which you adhere can lead to more effective decision-making. It is to this end that we focus on ethical decision making as a professional skill that can be practiced and applied in our day-to-day practice.

Chapter 6: Current Legal Issues in Student Affairs—Natalie Jackson and Janelle Schaller

The relationship between a higher education institution and its students is a complex one that requires student affairs educators to understand the legal rights of students and an appreciation of the legal responsibilities of the institution. A critical competency for student affairs professionals is the ability to identify legal issues arising within daily practice. This chapter introduces the reader to the legal basis for many of the rights afforded to students in the higher education context, including but not limited to federal laws and regulations related to student civil rights, privacy, safety, discipline, and free speech. The authors offer practical discussion of how to reduce institutional risk by leveraging available resources (internal and external), documenting potential issues, and considering all factors for informed decision-making.

Chapter 7: Academic Integrity and the Student Affairs Professional—Tricia Bertram Gallant

Academic integrity may not be the foremost ethical issue on the mind of the student affairs professional, given that it primarily falls under the purview of the faculty and there are a multitude of other pressing ethical issues that fall under the typical jurisdiction of student affairs. Yet, student affairs educators are often pulled into academic integrity matters whether by design or happenstance. In this chapter, the author provides a brief introduction to academic integrity, an overview of different academic integrity systems found in higher education and how the student affairs educator might be situated within such systems, and the different ethical touchpoints at which a student affairs professional might interact with academic integrity. The chapter includes a case studies and recommendations for how student affairs educators should be intentionally designed into an institutional approach to academic integrity.

***Chapter 8: Designing a Collective, Ethical, and
Equitable Student Success Culture in Hispanic-Serving
Institutions—Patty Farrell-Cole and José Cabrales***

What does it mean creating and upholding a culture of ethical practices within student affairs at public postsecondary institutions during a time when institutions are under scrutiny for college completion and success? This chapter examines this question by providing the readers a practice-based framework along with questions and potential implications to the questions. The heart of this chapter will be for student affairs professional working in institutions serving low-income students and students of color.

***Chapter 9: Ethical Vignettes and Case Studies—
Tammy Hullender and Margaret Partlo***

This chapter includes three ethical and legal case studies/vignettes that readers may use to analyze complex issues faced within the student affairs profession. Each case study presents an ethical dilemma in higher education associated with special populations of students such as those who study abroad, have military service obligations, or who are in degree programs requiring an internship. Specific state or institutional policies or actual events from legal cases are intertwined with hypothetical concerns posed by a group of student affairs professionals to form a vignette.